

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

8 October 1975

75-11,722/A

MEMORANDUM FOR: Honorable John O. Marsh, Jr.
Counsellor to the President

SUBJECT: Executive Order Establishing Restrictions
on Foreign Intelligence Activities

I am forwarding for your consideration a slightly revised draft of the Executive Order which you forwarded on October 2, 1975, establishing restrictions on foreign intelligence activities. The revisions, and the reasons for each revision, are:

Section I, Subparagraph (a)

The word "dissemination" has a meaning in the intelligence community which is so dissimilar from "collection" that it has been deleted and we have added "processing" and "forwarding."

Subparagraph (b)

Delete reference to the Commonwealth of Puerto Rico since this raises a question regarding the inclusion of the District of Columbia and the Canal Zone. I believe that the usual interpretation associated with territories and possessions would suffice for this purpose.

Subparagraph (d)

Substitute the phrase "nations, organizations or persons" as being more specific than "foreign powers or their agents."

Subparagraph (e)

In addition to substituting the phrase "nations, organizations or persons" for "powers," refine the definition of "foreign counterintelligence" with the more specific phrase "conduct of espionage, subversion or sabotage; and the countering abroad of such activity when inimical to United States interests."



Section II, Subparagraph (a)(2)(i)

Substitute the concept of persons who "require" access to information for persons who "must be given authorized access."

Subparagraph (c)

Substitute the affirmative "except in accordance with law" for the negative "in violation of law."

Subparagraph (c)(2)

Add the word "program" to the end of the sentence to clarify the meaning of the phrase "destroyed immediately."

Subparagraphs (d), (i) and (j)

In each paragraph substitute the affirmative "except in accordance with law" for the negative.

Subparagraph (j)

Reverse the order of subparagraphs (ii) and (iii), so that former subparagraph (ii), being last, will apply to the first two subparagraphs. (Renummer these paragraphs (1), (2) and (3) for internal consistency of the draft order.)

Section III

Delete the word "explicitly" in the first paragraph as unnecessary.

I have enclosed for review of you and your colleagues five copies of a revised draft incorporating the above changes, and will be pleased to consult further on this draft order at your convenience.


W. E. Colby
Director

Executive Order _____

ESTABLISHING RESTRICTIONS ON FOREIGN
INTELLIGENCE ACTIVITIES

By virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

SECTION I. Definitions. As used in this Order the following terms shall have the meanings ascribed to them below:

(a) "Collection" means the gathering, processing, storage and forwarding of information.

(b) "United States" includes the United States, its territories, and possessions.

(c) "Domestic activities" means activities within the United States.

(d) "Foreign intelligence" means information, other than foreign counterintelligence, on the capabilities, intentions, and activities of foreign nations, organizations or persons.

(e) "Foreign counterintelligence" means information on the capabilities, intentions and activities of foreign nations, organizations, persons or their agents with respect to their conduct of espionage, subversion or sabotage; and the countering abroad of such activity when inimical to United States interests.

(f) "Infiltration" means secret participation in an organization for the purpose of reporting on it.

(g) "Incidental reception" means the receipt of information, whose collection by an agency is otherwise prohibited by this order, during the course of such agency's authorized foreign intelligence or foreign counterintelligence activities, without specific intent to secure such information from a United States citizen and without direction or request from any other agency of the United States Government.

(h) "Foreign intelligence agency" means any department or agency, or division thereof, which is primarily engaged in foreign intelligence or foreign counterintelligence.

SECTION II. The following activities shall not be conducted either by any foreign intelligence agency or by any other department or agency in pursuit of foreign intelligence or foreign counterintelligence:

(a) Collection, evaluation, correlation or analysis, of information concerning the domestic activities of United States citizens; provided, however, that nothing herein shall preclude:

(1) the collection, evaluation, correlation and analysis of information of foreign intelligence or foreign counterintelligence interest derived from public sources; or

(2) the collection, evaluation, correlation and analysis of:

(i) Information on current or former employees (including employees of other Federal departments or agencies detailed for service with the foreign intelligence agency); applicants for employment with such agency; actual or imminent voluntary sources or contacts; current and former contractors and current or former employees or applicants for employment by such contractors; and all persons not included above who require access to information which could disclose foreign intelligence sources and methods; provided, however, that the same is done only in accordance with law and by authority from the head of such agency to determine the fitness of such persons to become or remain associated with such agency or to have such access, or in the case of a voluntary source or contact, to determine suitability or credibility, or otherwise to the extent the head of such agency determines is necessary to protect foreign intelligence sources and methods from unauthorized disclosure.

(ii) Information from or about a United States citizen collected abroad or from foreign sources in the course of an authorized foreign intelligence or foreign counterintelligence activity.

(iii) Foreign intelligence from United States citizens provided on a witting and voluntary basis. The foreign intelligence agency shall disclose its identity when seeking such foreign intelligence within the United States from United States citizens. When collection of foreign intelligence within the United States from persons who are not United States citizens results in the incidental reception of information from unknowing citizens, however, the receiving agency shall be permitted to make appropriate use of such information as permitted under this Order.

(iv) Administrative information of the kind customarily developed and utilized by departments and agencies of the Federal government.

(3) the transmission of any information concerning criminal activities that is received through incidental reception to any law enforcement agency with appropriate jurisdiction.

(4) the retention of information collected in violation of this Order to maintain a record for possible court action.

(b) Electronic interception of wire or oral communication the specific purpose of which is to obtain the communications of United States citizens within the United States without the consent of the subject or one of the parties thereof or without prior written authorization of the Attorney General.

(c) Testing of electronic surveillance and monitoring equipment within the United States except in accordance with law. All such tests shall be with the consent of the persons monitored unless:

(1) it is technically impractical to test such surveillance and monitoring equipment in a manner that would include consent; and

(2) any communication intercepted is disclosed only to test engineers and is destroyed immediately upon termination of the test program.

(d) Any opening of mail or examination of envelopes except in accordance with provisions of United States postal laws and regulations.

(e) Overseas activities other than those intended solely for obtaining necessary foreign intelligence and foreign counterintelligence or directly supporting such intelligence gathering activities, unless such activities shall have been determined by the President to be important to the national security of the United States.

(f) Infiltration in the United States of any organizations of United States citizens.

(g) Experimentation with drugs on human subjects, except with the informed consent of each such human subject and in accordance with the guidelines of the National Commission for the Protection of Human Subjects for Biomedical and Behavioral Research.

(h) Provision of services, equipment, personnel or facilities to the Law Enforcement Assistance Administration or state or local police organizations of the United States except as expressly authorized by law.

(i) Access to Federal income tax returns or tax information except in accordance with law and regulations.

(j) Physical surveillance of persons within the United States except to the extent that such surveillance is in accordance with law and is:

(1) Surveillance, in coordination with the Federal Bureau of Investigation, of foreign nationals in the United States in connection with foreign intelligence or counterintelligence operations;

(2) Surveillance, upon written approval by the head of the foreign intelligence agency, of individuals currently or formerly employed by that agency, its present or former contractors, or such contractors' employees, for the purpose of protecting foreign intelligence sources and methods from unauthorized disclosure; or

(3) Surveillance of persons involved with the individuals identified in subparagraphs (1) and (2) above, but only to the extent necessary to identify such persons.

(k) Operation of a proprietary company on a commercially competitive basis with United States businesses except to the minimum extent necessary to establish commercial credibility. No investments by a proprietary company shall be made on the basis of any substantive intelligence not available to the public.

SECTION III. No foreign intelligence agency shall participate in or fund any law enforcement activity within the United States except as may be authorized by law. Provided, that this prohibition shall not preclude:

(a) Cooperation between a foreign intelligence agency and appropriate law enforcement agencies for the purpose of protecting the personnel and facilities of the foreign intelligence agency or preventing espionage or other criminal activity related to foreign intelligence or foreign counter-intelligence; or

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(b) Provision of specialized equipment or technical knowledge for use by any other Federal department or agency.

SECTION IV. Foreign intelligence agency personnel may be detailed elsewhere within the Federal government as authorized by law. Employees so detailed shall be responsible to the host agency and shall not report to their parent agency on the affairs of the host agency except as may be directed by that agency. The head of the host agency and any subsequent successor shall be informed of the detailee's association with the parent agency.

SECTION V. Nothing in this Order shall prohibit any agency having law enforcement responsibilities from discharging such responsibilities pursuant to law. Nor shall this Order apply to any activities of the Federal Bureau of Investigation.

SECTION VI. This Order does not set forth all restrictions under which foreign intelligence agencies are obligated to operate, and it shall not be construed to derogate from any other restrictions imposed by law or by applicable administrative rules, regulations, or directives or to limit the authority of the National Security Council or the head of any foreign intelligence agency to promulgate and enforce further restrictions on the activities of such agency.

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CONCURRENCE		INFORMATION	SIGNATURE
Remarks: Bill: Attached is the Executive order "ESTABLISH- ING RESTRICTIONS ON FOREIGN INTELLIGENCE ACTIVITIES" with the suggested revisions agreed upon by the Deputy Directors. The revisions also attempt to take into account your thoughts related by Gen. Walters. This takes into account our discussions at the 5:30 meeting this afternoon. <div style="border: 1px solid black; width: 150px; height: 30px; margin: 0 auto;"></div> John S. Warner			
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FROM: NAME, ADDRESS AND PHONE NO.			DATE
General Counsel			10/8/75
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